

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James A. Schacher

94-00946

Name of Respondent

Gruntal & Co., Inc.

REPRESENTATION

For Claimant: Stephen E. Tisman, Esq. of Shiff & Tisman, New York, New York.

For Respondent: Donald N. Cohen, Esq. of Gruntal & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: March 10, 1994.

Claimant's Submission Agreement signed on: March 10, 1994.

Statement of Answer filed by Respondent on: May 20, 1994.

Respondent's Submission Agreement signed on: May 16, 1994.

HEARING INFORMATION

Pre-Hearing Conference: January 20, 1995 / One Session.

Hearing Date / Sessions: January 23, 1995 / One Session.

Hearing Location: Offices of National Association of Securities Dealers, Inc. located in New York City, New York.

CASE SUMMARY

Claimant, who was President and Chief Executive Officer of Greentree Software, Inc.. ("Greentree"), alleged that as the result of his exercise of stock options, which resulted in the acquisition of shares of Greentree stock, Claimant incurred an income tax liability of \$115,000 which was required to be paid immediately. Claimant next alleged that because of an existing "lock up" agreement with Pennsylvania Merchant Group, Ltd. ("Penn Merchants"), which had served as Greentree's investment bankers on a private placement, it was necessary for any disposition of shares by Claimant for Claimant to obtain a release from Penn Merchants. Claimant further alleged that the shares obtained by exercising the stock options were to be the source of the funds for his tax payment. Additionally, Claimant alleged that the release from Penn Merchants was conditioned upon the use of the first proceeds up to \$115,000 solely for payment of taxes, and the management of the actual sale of all shares by Penn Merchants. Claimant alleged that on April 23, 1993 Claimant sent to Respondent, via facsimile, instructions to immediately transfer 192,142 shares of Greentree common stock to the account of Pennsylvania Merchant Group, Ltd. Claimant further alleged that the instruction was received by Respondent but, that due to Respondent's failures the transfer was not effected until approximately May 17. Claimant further alleged that as a result of Respondent's failures, the stock could not be sold at a time when its price was substantially above the price during the period of its actual receipt. In addition, Claimant alleged that, as a result of the delay, Claimant faced the possibility of incurring interest and penalties on his tax liabilities and that Claimant incurred additional charges in order to obtain immediately available funds when the stock was finally sold.

Respondent maintained that on April 23, 1994 Claimant's account executive at Respondent received a facsimile letter from Claimant authorizing Respondent to deliver free through Depository Trust Corp. 195,142 shares of Greentree Software, Inc. to Pennsylvania Merchant Group Ltd. Respondent further maintained that Claimant's letter did not state that an immediate transfer was necessary in order to pay a tax liability that was allegedly required to be paid immediately. Respondent then maintained that normally it would have taken between two and five business days for delivery of the shares pursuant to the instructions in Claimant's letter which would have resulted in delivery between April 27 and 30. Respondent maintained that the shares were actually delivered on May 11, 1993 and not on May 17, 1993 as Claimant alleged. Respondent further maintained that Claimant was not damaged in any way by Respondent's actions as the high price during the week following actual delivery of the shares and the alleged correct delivery date for the shares was the same.

Respondent maintained the following affirmative defenses: (1) Claimant failed to mitigate the alleged damages or losses suffered, (2) any alleged losses suffered by Claimant were due to market conditions, (3) Claimant failed to exercise ordinary or reasonable care, caution or prudence, and (4) Claimant is estopped by his own conduct from asserting the claims alleged in the statement of claim.

RELIEF REQUESTED

Claimant requested:

1. An award in the amount of \$48,000.
2. Interest.
3. Attorneys' fees.

Respondent requested:

1. Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The public panelist assigned to be an arbitrator in this matter was not able to attend the hearing. The parties agreed at the hearing held to have the matter heard and decided by the Public Chairperson and the Industry Panelist selected to sit as arbitrators.

Claimant amended the number of shares at issue to 98,000 from 192,142 during the hearing held on January 23, 1995.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim for damages is denied.
2. Claimant's claim for interest is denied.
3. Claimant's claim for attorneys' fees is denied.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

1 Prehearing session X \$300 = \$300.

1 hearing session X \$400 = \$400.

Forum fees Assessed Against:

Claimant is assessed the sum of \$700 which represents the total forum fees due, less hearing session deposit paid by claimant of \$400, leaving \$300 due. Claimant is liable and shall pay to the NASD the sum of \$300.

Fees are payable to the National Association of Securities Dealers, Inc.

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Concurring Arbitrators' Signatures

Name

Public Chairman

James Dolan, Esq.

Name

Industry Panelist



Mark Lehman, Esq.

Date of Decision: March 8, 1995

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STATE OF:

SS:

COUNTY OF:

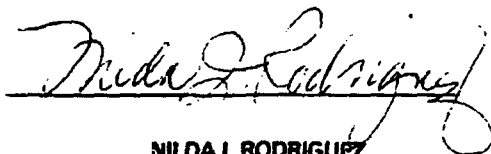
On this day of , 1995, before me personally appeared James Dolan, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *6th* day of *MARCH*, 1995, before me personally appeared Mark Lehman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



NILDA I. RODRIGUEZ
Notary Public, State of New York
No. 31-4876145
Qualified in New York County
Commission Expires November 24, 19*96*


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NASD Award #94-00946

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Public Chairman


James Dolan, Esq.

Name

Industry Panelist

Mark Lehman, Esq.

Date of Decision: MARCH 8, 1995

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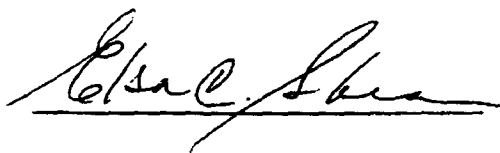
NASD Award #94-00946

STATE OF: NEW YORK

COUNTY OF: NASSAU

SS:

On this 6th day of March, 1995, before me personally appeared **James Dolan, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ELSA C. SHEA
NOTARY PUBLIC, State of New York
No. 4874348
Qualified in Nassau County
Commission Expires Dec. 15, 1996

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Mark Lehman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.
